

OEA/Ser.L/V/II.164
Doc. 124
7 September 2017
Original: Spanish

REPORT No. 103/17
PETITION 468-07
REPORT ON ADMISSIBILITY

PABLO RAFAEL SEYDELL
ARGENTINA

Approved by the Commission at its session No. 2098 held on September 7, 2017.
164th Special Period of Sessions.

Cite as: IACHR, Report No. 103/17. Petition 468-07. Admissibility. Pablo Rafael Seydell.
Argentina. September 7, 2017



REPORT No. 103/17
PETITION P-468-07
 REPORT ON ADMISSIBILITY
 PABLO RAFAEL SEYDELL
 ARGENTINA
 SEPTEMBER 7, 2017

I. INFORMATION ABOUT THE PETITION

Petitioning party:	Pablo Gabriel Salinas, Alfredo Guevara Escayola and Diego Jorge Lavado
Alleged victim:	Pablo Rafael Sergio Seydell
State denounced:	Argentina
Rights invoked:	Articles 1 (Obligation to Respect Rights), 5 (Humane Treatment), 7 (Personal Treatment), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention on Human Rights ¹

II. PROCEDURE BEFORE THE IACHR²

Date on which the petition was received:	April 16, 2007
Additional information received at the initial study stage:	March 3, 12 and 18 and May 16, 2011
Date on which the petition was transmitted to the State:	November 17, 2011
Date of the State's first response:	April 30, 2012
Additional observations from the petitioning party:	March 18, 2014; March 16, 2015; May 13, 2016
Additional observations from the State:	June 3, 2015; August 7, 2017

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes, under the terms of Section VII
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, ACHR (the instrument of ratification was deposited on September 5, 1984)

IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 8 (Fair Trial) and 25 (Judicial Protection) of the ACHR, in relation to its Article 1.1 (Obligation to Respect Rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; October 17, 2006
Timeliness of the petition:	Yes; April 16, 2007

¹ Hereinafter "the Convention", "the American Convention" or "ACHR."

² The observations presented by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The petitioners claim that the alleged victim was illegally arrested, and deprived of liberty for eight years during the military dictatorship in Argentina between 1976 and 1986. According to the information submitted, afterwards, after an armed group attacked “*La Tablada*” barracks in 1989, the alleged victim was forbidden to leave said country. This prohibition was later revoked in view of the fact that he was not accused in the case; however, due to an administrative error, the Migrations Department left in place an international travel ban connected with said case.

2. The petition indicates that the alleged victim and his partner, a playwright and actress, were invited by the University of Maryland to the United States to perform one of her plays. They indicate that after they arrived at Miami's airport, on November 4, 1996, Pablo Seydell was arrested by migration staff, inquired and isolated on the charge of “international terrorism.” They assert that he was asked if he had a permit to leave Argentina and how he did it, and that he replied by submitting the legal documents that allowed him to said country. They indicate that his belongings were searched and his bags damaged, and that the officers mocked him for a congenital malformation in his hands and feet, believing that the malformations were due to the explosion of an explosive artifact. They also claim that the officers had him naked for an hour and beat him on his face to get information about who he would meet in the United States, since they disbelieved he was a guest of the University. Finally, they submit that he was detained until the following day, when he was deported to Chile, from where he had flown to Miami. The information submitted indicates that on the alleged victim's passport there is a stamp that reads “denied” by the United States immigration authorities.

3. The petitioners claim that these facts were the result of the international travel ban that the Migrations Department mistakenly held in place. They assert that on November 7, 1996, i.e. over seven and a half years after the judge of “*La Tablada*” case had revoked the travel ban on the alleged victim, a federal judge from Mendoza ordered to immediately cease this ban in view of an *habeas corpus* filed on November 1, 1996 in his favor. In addition, they indicate that in those legal proceedings it was proved that the ban to leave the country had been annulled by a judge many years before and that, by an omission by the migration authorities, it was still in place in their files.

4. The petitioners submit that in view of these facts, on November 2, 1998, a claim for damages was lodged against the State, before Federal Court No.1 of Mendoza, which rejected it on August 19, 2004. The claim was dismissed in second instance by the Federal Court of Appeals of Mendoza on October 28, 2005. Moreover, they indicate that they filed a federal special remedy, which was rejected on May 3, 2006; and that the Federal Supreme Court dismissed an appeal on October 17, 2006.

5. They claim that the facts described seriously harmed the alleged victim, as they reminded him of the sufferings that he underwent in prison during the dictatorship; therefore, they allege violations of his rights to humane treatment, personal liberty, a fair trial and judicial protection. They also submit that those who rejected their complaint in the first and second instance were judges who were later prosecuted for crimes against humanity, alleging a possible lack of impartiality on the alleged victim's matter.

6. For its part, the State alleges the IACHR's untimely transmission of the petition. It indicates that the petitioners merely question an unfavorable decision, which does not lead to a violation of rights protected by the Convention. It submits that, in the claim, there is nothing to indicate that they challenge the proceedings, which the State affirms was held in accordance with the international standards on due process of law. As a result, it believes that the petitioners seek that the Commission work as a fourth instance over the domestic jurisdiction, as the conflict concerns domestic legal judgments issued in the framework of proceedings in which the alleged victim could be heard, submit and produce evidence, and appeal against resolutions within a reasonable period. Therefore, the State indicates that the doctrine of a fourth instance would be applicable in this case, and that the subsidiarity proper to international human rights systems means that bodies like the IACHR are of a complementary or assisting nature whose ruling power cannot be invoked on the basis of mere disconformity with the judicial rulings issued.

7. Furthermore, it submits that the petitioning party does not recognize the fact that the alleged detention and the denounced mistreatments occurred in a territory not subject to Argentina's jurisdiction are not attributable to the State, since regarding these facts the alleged victim was under the United States' jurisdiction; hence, Argentina has no standing to intervene in that matter. It also indicates that, in the lower-instance judgment, the evidence was analyzed and it was found that the records on the alleged victim's passport are not consistent with his account of the facts and that in contrast to the alleged victim's statements, nothing prevented him from leaving Argentina or Chile, because he actually arrived in the United States; therefore, after an analysis of causation between the State's acts and the possible damages suffered, the court decided to dismiss the claim. The State moreover indicates that, in second instance, the court concluded that there was no causality between the facts that occurred in Miami and the order that forbid the alleged victim to leave the country, which was mistakenly held in place; and that afterwards, the special remedy and the appeal were rejected.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. Based on the information available, the alleged victim filed a civil complaint alleging general damages, such as the cost of the tickets and the stay, loss of profit in view of the updated interests of said expenses, as well as the loss of job opportunities in light of his being unable to participate in the play and the professional recognition he would have received, among others. The alleged victim also alleged moral damages in view of the suffering that he and his family faced, as well as the damage to his good name and honor, particularly in view of his connection with "*La Tablada*" case and the coverage of his deportation by local and United States' media. In their complaint, the petitioners indicate that the legal proceedings ended though the filing of an appeal, which was eventually rejected by the Supreme Court on October 17, 2006. For its part, the State does not submit any arguments in this regard.

9. In light of the foregoing, the Commission concludes that the alleged victim exhausted the domestic remedies through the judgment of October 17, 2006, pursuant to Articles 46.1.a of the Convention and Article 31.1 of the IACHR Rules of Procedure. Given that the petition was submitted on April 16, 2007, it meets the requirement established in Article 46.1.b of the Convention and Article 32.1 of the Rules.

10. Finally, as to the State's claim regarding the delay between the date the petition was filed and its transmission to the State, the Commission notes that neither the American Convention nor the Rules establish a deadline for transmitting a petition to the State following the date of reception of said complaint; and that the deadlines that the Rules and the Convention establish for other processing stages are not applicable.³

VII. COLORABLE CLAIM

11. In light of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the Commission believes that the alleged fact that the ban to travel abroad was held in place by the Migration Department and that said prohibition might have caused the alleged victim's alleged deportation, along with the alleged lack of reparation of the damages connected with said prohibition, may establish possible violations of the rights enshrined in Articles 8 and 25 of the American Convention, in relation to Article 1.1 thereof.

12. In addition, with respect to the claims concerning the violation of Articles 5 and 7 of the ACHR, given that the alleged facts occurred in the territory of another State, with an alleged direct causal relationship with said State, the Commission believes that said claims exceed its competence in relation to this petition.

³ IACHR, Report No. 20/17, Petition 1500-08. Admissibility. Rodolfo David Piñeyro Ríos. Argentina, March 12, 2017, par. 8.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 8 and 25 of the American Convention, in accordance with its Article 1.1;
2. To find the instant petition inadmissible in relation to Article 5 and 7 of the American Convention;
3. To notify the parties of this decision;
4. To continue with the analysis on the merits; and
5. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights in the city of México, on the 7 day of the month of September, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and Luis Ernesto Vargas Silva, Commissioners.